



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5637

by Rep. Naomi D. Jakobsson

SYNOPSIS AS INTRODUCED:

510 ILCS 77/10.2 new
510 ILCS 77/10.45
510 ILCS 77/11
510 ILCS 77/12
510 ILCS 77/12.1
510 ILCS 77/13
510 ILCS 77/15
510 ILCS 77/20
510 ILCS 77/35
510 ILCS 77/37 new

Amends the Livestock Management Facilities Act. Changes the definition of "new facility" to include an existing facility that expands or modifies its operations to increase the animal unit capacity. Provides that, within 10 calendar days after notification by the Department to the owner or operator that the registration and notice of intent to construct are complete, the owner or operator of the proposed facility shall mail by certified mail, return receipt requested, a copy of the complete notice of intent to construct form to the owners of property located within the setback areas. Makes changes to provisions concerning public hearings and final determinations. Provides that livestock management facilities or livestock waste handling facilities constructed after the effective date of this amendatory Act of the 98th General Assembly shall not have man-made conduits from surface waters to those livestock management facilities or livestock waste handling facilities. Provides that a livestock management facility's waste management plan shall be submitted to the Department and the Department shall make the plan available to the public. Adds information that a waste management plan must include. Provides for civil actions under specified provisions of the Act. Effective immediately.

LRB098 19119 MGM 54270 b

1 AN ACT concerning animals.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Livestock Management Facilities Act is
5 amended by changing Sections 10.45, 11, 12, 12.1, 13, 15, 20,
6 and 35 and by adding Sections 10.2 and 37 as follows:

7 (510 ILCS 77/10.2 new)

8 Sec. 10.2. Affected party. "Affected party" means any
9 person who is or will be aggrieved by the construction of the
10 proposed livestock management facility or livestock waste
11 handling facility, including, but not limited to, all persons
12 identified by the applicant in its notice of intent to
13 construct as owning property within the setback area or as
14 owners or operators of the nearest residence, non-farm
15 business, or common place of assembly, as well as any person
16 who owns or resides in property contiguous to the outer
17 boundaries of the required setback.

18 (510 ILCS 77/10.45)

19 Sec. 10.45. New facility. "New facility" means a livestock
20 management facility or a livestock waste handling facility the
21 construction or expansion of which is commenced on or after the
22 effective date of this Act. "New facility" includes an existing

1 facility that expands or modifies its operations to increase
2 the animal unit capacity. ~~Expanding a facility where the fixed~~
3 ~~capital cost of the new components constructed within a 2-year~~
4 ~~period does not exceed 50% of the fixed capital cost of a~~
5 ~~comparable entirely new facility shall not be deemed a new~~
6 ~~facility as used in this Act.~~

7 (Source: P.A. 89-456, eff. 5-21-96.)

8 (510 ILCS 77/11)

9 Sec. 11. Filing notice of intent to construct and
10 construction data; registration of facilities.

11 (a) An owner or operator shall file a notice of intent to
12 construct for a livestock management facility or livestock
13 waste handling facility with the Department prior to
14 construction to establish a base date, which shall be valid for
15 one year, for determination of setbacks in compliance with
16 setback distances or, in the case of construction that is not a
17 new facility, with the maximum feasible location requirements
18 of Section 35 of this Act.

19 (b) For a livestock waste handling facility that is not
20 subject to Section 12 of this Act, a construction plan of the
21 waste handling structure with design specifications of the
22 structure noted as prepared by or for the owner or operator
23 shall be filed with the Department at least 10 calendar days
24 prior to the anticipated dates of construction. Upon receipt of
25 the notice of intent to construct form or the construction

1 plan, the Department shall review the documents to determine if
2 all information has been submitted or if clarification is
3 needed. The Department shall, within 15 calendar days of
4 receipt of a notice of intent to construct or the construction
5 plan, notify the owner or operator that construction may begin
6 or that clarification is needed.

7 (c) For a livestock waste handling facility that is subject
8 to Section 12 of this Act, a completed registration shall be
9 filed with the Department at least 37 calendar days prior to
10 the anticipated dates of construction. The registration shall
11 include the following: (i) the name and address of the owner
12 and operator of the livestock waste handling facility; (ii) a
13 general description of the livestock waste handling structure
14 and the type and number of the animal units of livestock it
15 serves; (iii) the construction plan of the waste handling
16 structure with design specifications of the structure noted as
17 prepared by or for the owner or operator, and (iv) anticipated
18 dates of construction. The Department shall, within 15 calendar
19 days of receipt of the registration form, notify the person
20 submitting the form that the registration is complete or that
21 clarification information is needed. Within 10 calendar days
22 after notification by the Department to the owner or operator
23 that the registration and notice of intent to construct are
24 complete, the owner or operator of the proposed facility shall
25 mail by certified mail, return receipt requested, a copy of the
26 complete notice of intent to construct form to the owners of

1 property located within the setback areas. This mailing shall
2 include information about the right to petition the county
3 board to request a public hearing.

4 (d) Any owner or operator who fails to file a notice of
5 intent to construct form or construction plans with the
6 Department prior to commencing construction, upon being
7 discovered by the Department, shall be subject to an
8 administrative hearing by the Department. The administrative
9 law judge, upon determination of a failure to file the
10 appropriate form, shall impose a civil administrative penalty
11 in an amount no more than \$1,000 and shall enter an
12 administrative order directing that the owner or operator file
13 the appropriate form within 10 business days after receiving
14 notice from the Department. If, after receiving the
15 administrative law judge's order to file, the owner or operator
16 fails to file the appropriate form with the Department, the
17 Department shall impose a civil administrative penalty in an
18 amount no less than \$1,000 and no more than \$2,500 and shall
19 enter an administrative order prohibiting the operation of the
20 facility until the owner or operator is in compliance with this
21 Act. Penalties under this subsection (d) not paid within 60
22 days of notice from the Department shall be submitted to the
23 Attorney General's office or an approved private collection
24 agency.

25 (Source: P.A. 91-110, eff. 7-13-99.)

1 (510 ILCS 77/12)

2 Sec. 12. Public hearing ~~informational meeting~~; lagoons and
3 non-lagoon structures.

4 (a) Beginning on the effective date of this amendatory Act
5 of 1999, within 7 days after receiving a complete form giving
6 notice of intent to construct (i) a new livestock management
7 facility or livestock waste handling facility serving 1,000 or
8 more animal units that does not propose to utilize a lagoon or
9 (ii) a livestock waste management facility or livestock waste
10 handling facility that does propose to utilize a lagoon, the
11 Department shall send a copy of the notice form to the county
12 board of the county in which the facility is to be located and
13 shall publish a public notice in a newspaper of general
14 circulation within the county.

15 (a-5) After receiving a copy of the notice form from the
16 Department, the county board shall, ~~may, at its discretion and~~
17 within 30 days after receipt of the notice, upon request from
18 any person receiving personal notice under Section 10.2 or 11
19 of this Act, request that the Department conduct a public
20 hearing ~~an informational meeting~~ concerning the proposed
21 construction that is subject to this Section. ~~The In addition,~~
22 ~~during the county's 30 day review period, county residents may~~
23 ~~petition the county board of the county where the proposed new~~
24 ~~facility will be located to request that the Department conduct~~
25 ~~an informational meeting. When petitioned by 75 or more of the~~
26 ~~county's residents who are registered voters, the county board~~

1 ~~shall request that the Department conduct an informational~~
2 ~~meeting. If the county board requests that the Department shall~~
3 ~~conduct the public hearing informational meeting, the~~
4 ~~Department shall conduct the informational meeting~~ within 15
5 days of the county board's request. The ~~If the~~ Department
6 ~~conducts such a meeting, it~~ shall cause notice of the hearing
7 ~~meeting~~ to be published in a newspaper of general circulation
8 in the county and in the State newspaper and shall send a copy
9 of the notice to the County Board. Upon receipt of the notice,
10 the County Board shall post the notice on the public
11 informational board at the county courthouse at least 10 days
12 before the hearing meeting. The owner or operator who submitted
13 the notice of intent to construct to the Department shall
14 appear at the hearing meeting. At the hearing meeting, the
15 Department shall afford affected parties and other persons
16 ~~members of the public~~ an opportunity to ask questions and
17 present oral or written comments concerning the proposed
18 construction. The period for comments shall end 10 days after
19 the date on which the public hearing is held.

20 (b) The county board shall submit, ~~at the informational~~
21 ~~meeting or~~ within 30 days of the public hearing, a following
22 ~~the meeting an advisory, non-binding~~ recommendation to the
23 Department about the proposed new facility's construction in
24 accordance with the applicable requirements of this Act. The
25 county board's recommendation against the granting of
26 permission to construct shall result in the prohibition of

1 construction by the Department. The county board's
2 recommendation to grant permission to construct shall be
3 advisory to the Department, pending review of the application
4 by the Department. The ~~advisory, non-binding~~ recommendation
5 shall contain at a minimum:

6 (1) a statement of whether the proposed facility
7 achieves or fails to achieve each of the 8 siting criteria
8 as outlined in subsection (d); and

9 (2) a statement of the information and criteria used by
10 the county board in determining that the proposed facility
11 met or failed to meet any of the criteria described in
12 subsection (d).

13 (c) Construction ~~When the county board requests an~~
14 ~~informational meeting, construction~~ shall not begin until
15 after the public hearing ~~informational meeting~~ has been held,
16 the Department has reviewed the county board's recommendation
17 and replied to the recommendation indicating if the proposed
18 new livestock management facility or the new livestock waste
19 handling facility is or will be in compliance with the
20 requirements of the Act, and the owner, operator, or certified
21 manager and operator has received the Department's final
22 determination ~~notice~~ that the setbacks and all applicable
23 requirements of this Act have been met.

24 (d) At the public hearing ~~informational meeting~~ for the
25 proposed facility, the Department of Agriculture shall receive
26 evidence by testimony or otherwise on the following subjects:

1 (1) that the proposed facility is authorized in the
2 zoning district within which the subject property is
3 located;

4 (2) that the proposed facility is consistent with the
5 county's comprehensive plan and planned future development
6 of the area;

7 (3) that the proposed facility is consistent with
8 existing uses, zoning, and general character of the
9 surrounding area;

10 (4) that the establishment, maintenance, and operation
11 of the proposed facility will not be detrimental to or
12 endanger the public health, safety, morals, comfort, or
13 general welfare of the area;

14 (5) that the proposed facility will not be injurious to
15 the use and enjoyment of other properties in the vicinity,
16 nor will it otherwise create a nuisance;

17 (6) that the proposed facility will not diminish or
18 impair property values within the vicinity;

19 (7) that adequate utilities, access roads, drainage,
20 and other necessary facilities have been or will be
21 provided and road damage will be mitigated;

22 (8) that adequate measures have been or will be taken
23 to provide ingress and egress to ensure that the proposed
24 facility will not cause traffic congestion and hazards on
25 public roads; and

26 (9) that the proposed facility has adequate plans for

1 the storage, treatment, management, and disposal of its
2 waste to ensure that it is protective of the environment
3 and will not cause odor or air pollution or cause spills,
4 runoff, or leaching or otherwise result in the destruction,
5 loss, or damage to surface or groundwater or other natural
6 resources.

7 In determining whether the foregoing standards have been
8 met, the county or local siting authority may consider as
9 evidence the previous operating experience and evidence of
10 mismanagement or past violations of law, including past record
11 of convictions or admissions of violations of the applicant and
12 any subsidiary, parent corporation, or managing partner in the
13 field of livestock management when considering the criteria.

14 ~~(1) Whether registration and livestock waste~~
15 ~~management plan certification requirements, if required,~~
16 ~~are met by the notice of intent to construct.~~

17 ~~(2) Whether the design, location, or proposed~~
18 ~~operation will protect the environment by being consistent~~
19 ~~with this Act.~~

20 ~~(3) Whether the location minimizes any incompatibility~~
21 ~~with the surrounding area's character by being located in~~
22 ~~any area zoned for agriculture where the county has zoning~~
23 ~~or where the county is not zoned, the setback requirements~~
24 ~~established by this Act are complied with.~~

25 ~~(4) Whether the facility is located within a 100-year~~
26 ~~floodplain or an otherwise environmentally sensitive area~~

1 ~~(defined as an area of karst area or with aquifer material~~
2 ~~within 5 feet of the bottom of the livestock waste handling~~
3 ~~facility) and whether construction standards set forth in~~
4 ~~the notice of intent to construct are consistent with the~~
5 ~~goal of protecting the safety of the area.~~

6 ~~(5) Whether the owner or operator has submitted plans~~
7 ~~for operation that minimize the likelihood of any~~
8 ~~environmental damage to the surrounding area from spills,~~
9 ~~runoff, and leaching.~~

10 ~~(6) Whether odor control plans are reasonable and~~
11 ~~incorporate reasonable or innovative odor reduction~~
12 ~~technologies given the current state of such technologies.~~

13 ~~(7) Whether traffic patterns minimize the effect on~~
14 ~~existing traffic flows.~~

15 ~~(8) Whether construction or modification of a new~~
16 ~~facility is consistent with existing community growth,~~
17 ~~tourism, recreation, or economic development or with~~
18 ~~specific projects involving community growth, tourism,~~
19 ~~recreation, or economic development that have been~~
20 ~~identified by government action for development or~~
21 ~~operation within one year through compliance with~~
22 ~~applicable zoning and setback requirements for populated~~
23 ~~areas as established by this Act.~~

24 (Source: P.A. 91-110, eff. 7-13-99.)

25 (510 ILCS 77/12.1)

1 Sec. 12.1. Final determination.

2 (a) Within 15 calendar days of the close of the comment
3 period under subsection (b) of Section 12, the Department shall
4 determine if, more likely than not, the provisions of the Act
5 have been met and shall send written notice of this
6 determination to the applicant and the county board indicating
7 that construction may proceed. If the Department finds that,
8 more likely than not, the provisions of the Act have not been
9 met the Department shall send written notice to the applicant
10 and the county board that construction is prohibited.

11 (a-5) If the Department finds that additional information
12 or that specific changes are needed in order to assist the
13 Department in making the determination under subsection (a) of
14 this Section, the Department may request such information or
15 changes from the owner or operator of the new livestock waste
16 handling facility or waste management facility.

17 (b) (Blank). ~~If no informational meeting is held, the~~
18 ~~Department shall, within 15 calendar days following the end of~~
19 ~~the period for the county board to request an informational~~
20 ~~meeting, notify the owner or operator that construction may~~
21 ~~begin or that clarification is needed.~~

22 (c) If the owner or operator of a proposed livestock
23 management facility or livestock waste handling facility
24 amends the facility plans during the Department's review, the
25 Department shall notify the county board, ~~which may exercise~~
26 ~~its option of a public informational meeting pursuant to~~

1 ~~Section 12 of this Act.~~

2 (d) If the owner or operator of a proposed new livestock
3 management or new livestock waste handling facility amends the
4 facility plans during the Department's review process by
5 increasing the animal unit capacity of the facility such that
6 the required setback distances will be increased, or makes any
7 other material amendment to the facility plans, the owner or
8 operator shall submit a revised notice of intent to construct
9 and comply with applicable provisions of this Act as if the
10 application were a new application.

11 (e) An affected party who participated in the public
12 hearing under Section 12 of this Act, or any applicant, may
13 judicially appeal the Department's final determination under
14 the Code of Civil Procedure.

15 (Source: P.A. 91-110, eff. 7-13-99.)

16 (510 ILCS 77/13)

17 Sec. 13. Livestock waste handling facilities other than
18 earthen livestock waste lagoons; construction standards;
19 certification; inspection; removal-from-service requirements.

20 (a) After the effective date of this amendatory Act of
21 1999, livestock waste handling facilities other than earthen
22 livestock waste lagoons used for the storage of livestock waste
23 shall be constructed in accordance with this Section.

24 (1) Livestock waste handling facilities constructed of
25 concrete shall meet the strength and load factors set forth

1 in the Midwest Plan Service's Concrete Manure Storage
2 Handbook (MWPS-36) and future updates. In addition, those
3 structures shall meet the following requirements:

4 (A) Waterstops shall be incorporated into the
5 design of the storage structure when consistent with
6 the requirements of paragraph (1) of this subsection;

7 (B) Storage structures that handle waste in a
8 liquid form shall be designed to contain a volume of
9 not less than the amount of waste generated during 150
10 days of facility operation at design capacity; the
11 owner or operator of a livestock waste handling
12 facility constructed with concrete with a design
13 capacity of less than 300 animal units may demonstrate
14 to the Department that a reduced storage volume, not
15 less than 60 days, is feasible due to (i) the
16 availability of land application areas that can
17 receive manure at agronomic rates or (ii) another
18 manure disposal method is proposed that will allow for
19 the reduced manure storage design capacity; the
20 Department shall evaluate the proposal and determine
21 whether a reduced manure storage design capacity is
22 appropriate for the site; and

23 (C) Storage structures not covered or otherwise
24 protected from precipitation shall, in addition to the
25 waste storage volume requirements of subparagraph (B)
26 of paragraph (1) of this subsection, include a 2-foot

1 freeboard.

2 (2) A livestock waste handling facility in a
3 prefabricated form shall meet the strength, load, and
4 compatibility factors for its intended use. Those factors
5 shall be verified by the manufacturer's specifications.

6 (3) Livestock waste handling facilities holding
7 semi-solid livestock waste, including but not limited to
8 picket dam structures, shall be constructed according to
9 the requirements set forth in the Midwest Plan Service's
10 Livestock Waste Facilities Handbook (MWPS-18) and future
11 updates or similar standards used by the Natural Resources
12 Conservation Service of the United States Department of
13 Agriculture.

14 (4) Livestock waste handling facilities holding solid
15 livestock waste shall be constructed according to the
16 requirements set forth in the Midwest Plan Service's
17 Livestock Waste Facilities Handbook (MWPS-18) and future
18 updates or similar standards used by the Natural Resources
19 Conservation Service of the United States Department of
20 Agriculture. In addition, solid livestock waste stacking
21 structures shall be sized to store not less than the amount
22 of waste generated during 6 months of facility operation at
23 design capacity. The owner or operator of a livestock waste
24 handling facility holding solid livestock waste with a
25 design capacity of less than 300 animal units may
26 demonstrate to the Department that a reduced storage

1 volume, not less than 2 months, is feasible due to (i) the
2 availability of land application areas that can receive
3 manure at agronomic rates or (ii) another manure disposal
4 method is proposed that will allow for the reduced storage
5 design capacity. The Department shall evaluate the
6 proposal and determine whether a reduced manure storage
7 design capacity is appropriate for the site.

8 (5) Holding ponds used for the temporary storage of
9 livestock feedlot run-off shall be constructed according
10 to the requirements set forth in the Midwest Plan Service's
11 Livestock Waste Facilities Handbook (MWPS-18) and future
12 updates or similar standards used by the Natural Resources
13 Conservation Service of the United States Department of
14 Agriculture.

15 (6) Facilities constructed after the effective date of
16 this amendatory Act of the 98th General Assembly shall be
17 constructed to ensure that there are no man-made conduits
18 from livestock management facilities or livestock waste
19 handling facilities to surface waters.

20 (b) New livestock management facilities and livestock
21 waste handling facilities constructed after the effective date
22 of this amendatory Act of 1999 shall be subject to the
23 additional construction requirements and siting prohibitions
24 provided in this subsection (b).

25 (1) No new non-lagoon livestock management facility or
26 livestock waste handling facility may be constructed

1 within the floodway of a 100-year floodplain. A new
2 livestock management facility or livestock waste handling
3 facility may be constructed within the portion of a
4 100-year floodplain that is within the flood fringe and
5 outside the floodway provided that the facility is designed
6 and constructed to be protected from flooding and meets the
7 requirements set forth in the Rivers, Lakes, and Streams
8 Act, Section 5-40001 of the Counties Code, and Executive
9 Order Number 4 (1979). The delineation of floodplains,
10 floodways, and flood fringes shall be in compliance with
11 the National Flood Insurance Program. Protection from
12 flooding shall be consistent with the National Flood
13 Insurance Program and shall be designed so that stored
14 livestock waste is not readily removed.

15 (2) A new non-lagoon livestock waste handling facility
16 constructed in a karst area shall be designed to prevent
17 seepage of the stored material into groundwater in
18 accordance with ASAE 393.2 or future updates. Owners or
19 operators of proposed facilities should consult with the
20 local soil and water conservation district, the University
21 of Illinois Cooperative Extension Service, or other local,
22 county, or State resources relative to determining the
23 possible presence or absence of such areas.
24 Notwithstanding the other provisions of this paragraph
25 (2), after the effective date of this amendatory Act of
26 1999, no non-lagoon livestock waste handling facility may

1 be constructed within 400 feet of any natural depression in
2 a karst area formed as a result of subsurface removal of
3 soil or rock materials that has caused the formation of a
4 collapse feature that exhibits internal drainage. For the
5 purposes of this paragraph (2), the existence of such a
6 natural depression in a karst area shall be indicated by
7 the uppermost closed depression contour lines on a USGS 7
8 1/2 minute quadrangle topographic map or as determined by
9 Department field investigation in a karst area.

10 (3) A new non-lagoon livestock waste handling facility
11 constructed in an area where aquifer material is present
12 within 5 feet of the bottom of the facility shall be
13 designed to ensure the structural integrity of the
14 containment structure and to prevent seepage of the stored
15 material to groundwater. Footings and underlying structure
16 support shall be incorporated into the design standards of
17 the storage structure in accordance with the requirements
18 of Section 4.1 of the American Society of Agricultural
19 Engineers (ASAE) EP 393.2 or future updates.

20 (c) A livestock waste handling facility owner may rely on
21 guidance from the local soil and water conservation district,
22 the Natural Resources Conservation Service of the United States
23 Department of Agriculture, or the University of Illinois
24 Cooperative Extension Service for soil type and associated
25 information.

26 (d) The standards in subsections (a) and (b) shall serve as

1 interim construction standards until such time as permanent
2 rules promulgated pursuant to Section 55 of this Act become
3 effective. In addition, the Department and the Board shall
4 utilize the interim standards in subsections (a) and (b) as a
5 basis for the development of such permanent rules.

6 (e) The owner or operator of a livestock management
7 facility or livestock waste handling facility may, with the
8 approval of the Department, elect to exceed the strength and
9 load requirements as set forth in this Section.

10 (f) The owner or operator of a livestock management
11 facility or livestock waste handling facility shall send, by
12 certified mail or in person, to the Department a certification
13 of compliance together with copies of verification documents
14 upon completion of construction. In the case of structures
15 constructed with the design standards used by the Natural
16 Resources Conservation Service of the United States Department
17 of Agriculture, copies of the design standards and a statement
18 of verification signed by a representative of the United States
19 Department of Agriculture shall accompany the owner's or
20 operator's certification of compliance. The certification
21 shall state that the structure meets or exceeds the
22 requirements in subsection (a) of this Section. A \$250 filing
23 fee shall accompany the statement.

24 (g) The Department shall inspect the construction site
25 prior to construction, during construction, and within 10
26 business days following receipt of the certification of

1 compliance to determine compliance with the construction
2 standards.

3 (h) The Department shall require modification when
4 necessary to bring the construction into compliance with the
5 standards set forth in this Section. The person making the
6 inspection shall discuss with the owner, operator, or certified
7 livestock manager an evaluation of the livestock waste handling
8 facility construction and shall (i) provide on-site written
9 recommendations to the owner, operator, or certified livestock
10 manager of what modifications are necessary or (ii) inform the
11 owner, operator, or certified livestock manager in writing that
12 the facility meets the standards set forth in this Section. On
13 the day of the inspection, the person making the inspection
14 shall give the owner, operator, or certified livestock manager
15 a written report of findings based on the inspection together
16 with an explanation of remedial measures necessary to enable
17 the livestock waste handling facility to meet the standards set
18 forth in this Section. The Department shall, within 5 business
19 days of the date of inspection, send an official written notice
20 to the owner or operator of the livestock waste handling
21 facility by certified mail, return receipt requested,
22 indicating that the facility meets the standards set forth in
23 this Section or identifying the remedial measures necessary to
24 enable the livestock waste handling facility to meet the
25 standards set forth in this Section. The owner or operator
26 shall, within 10 business days of receipt of an official

1 written notice of deficiencies, contact the Department to
2 develop the principles of an agreement of compliance. The owner
3 or operator and the Department shall enter into an agreement of
4 compliance setting forth the specific changes to be made to
5 bring the construction into compliance with the standards
6 required under this Section. If an agreement of compliance
7 cannot be achieved, the Department shall issue a compliance
8 order to the owner or operator outlining the specific changes
9 to be made to bring the construction into compliance with the
10 standards required under this Section. The owner or operator
11 and any affected party can request an administrative hearing to
12 review ~~contest~~ the provisions of the Department's compliance
13 order.

14 (i) (Blank).

15 (j) If any owner or operator operates in violation of an
16 agreement of compliance, the Department shall seek an
17 injunction in circuit court to prohibit the operation of the
18 facility until construction and certification of the livestock
19 waste handling facility are in compliance with the provisions
20 of this Section.

21 (k) When any livestock management facility not using an
22 earthen livestock waste lagoon is removed from service, the
23 accumulated livestock waste remaining within the facility
24 shall be removed and applied to land at rates consistent with a
25 waste management plan for the facility. Removal of the waste
26 shall occur within 12 months after the date livestock

1 production at the facility ceases. In addition, the owner or
2 operator shall make provisions to prevent the accumulation of
3 precipitation within the livestock waste handling facility.
4 Upon completion of the removal of manure, the owner or operator
5 of the facility shall notify the Department that the facility
6 is being removed from service and the remaining manure has been
7 removed. The Department shall conduct an inspection of the
8 livestock waste handling facility and notify ~~inform~~ the owner
9 or operator in writing that the requirements imposed under this
10 subsection (k) have been met or that additional actions are
11 necessary. Commencement of operations at a facility that has
12 livestock shelters left intact and that has completed the
13 requirements imposed under this subsection (k) and that has
14 been operated as a livestock management facility or livestock
15 waste handling facility for 4 consecutive months at any time
16 within the previous 10 years shall not be considered a new or
17 expanded livestock management or waste handling facility. A new
18 facility constructed after May 21, 1996 that has been removed
19 from service for a period of 2 or more years shall not be
20 placed back into service prior to an inspection of the
21 livestock waste handling facility and receipt of written
22 approval by the Department.

23 (Source: P.A. 95-38, eff. 1-1-08; 96-328, eff. 8-11-09.)

24 (510 ILCS 77/15)

25 Sec. 15. Livestock waste lagoon.

1 (a) Standards for livestock waste lagoon construction. Any
2 earthen livestock waste lagoon subject to registration shall be
3 constructed or modified in accordance with "Design of Anaerobic
4 Lagoons for Animal Waste Management" promulgated by the
5 American Society of Agricultural Engineers or the national
6 guidelines as published by the United States Department of
7 Agriculture Natural Resource Conservation Service in Illinois
8 and titled Waste Treatment Lagoon. The owner or operator of the
9 earthen livestock lagoon may, with approval from the
10 Department, modify or exceed these standards in order to meet
11 site specific objectives. Notwithstanding any other
12 requirement of this subsection, every earthen livestock waste
13 lagoon shall include the construction of a secondary berm,
14 filter strip, grass waterway, or terrace, or any combination of
15 those, outside the perimeter of the primary berm if an engineer
16 licensed under the Professional Engineering Practice Act of
17 1989 and retained by the registrant determines, with the
18 concurrence of the Department, that construction of such a
19 secondary berm or other feature or features is necessary in
20 order to ensure against a release of livestock waste from the
21 lagoon (i) that encroaches or is reasonably expected to
22 encroach upon land other than the land occupied by the
23 livestock waste handling facility of which the lagoon is a part
24 or (ii) that enters or is reasonably expected to enter the
25 waters of this State. The Department shall determine compliance
26 with these requirements. The Department may require changes in

1 design or additional requirements to protect groundwater, such
2 as extra liner depth or synthetic liners, when it appears
3 groundwater could be impacted. Livestock management facilities
4 or livestock waste handling facilities constructed after the
5 effective date of this amendatory Act of the 98th General
6 Assembly shall not have man-made conduits from surface waters
7 to those livestock management facilities or livestock waste
8 handling facilities.

9 (a-5) New earthen livestock waste lagoons constructed
10 after the effective date of this amendatory Act of 1999 shall
11 be subject to additional construction requirements and siting
12 prohibitions as provided in this subsection (a-5).

13 (1) No new earthen livestock waste lagoon may be
14 constructed within the floodway of a 100-year floodplain. A
15 new earthen livestock waste lagoon may be constructed
16 within the portion of a 100-year floodplain that is within
17 the flood fringe and outside the floodway provided that the
18 facility is designed and constructed so that livestock
19 waste is not readily removed during flooding and meets the
20 requirements set forth in the Rivers, Lakes, and Streams
21 Act, Section 5-40001 of the Counties Code, and Executive
22 Order Number 4 (1979). The delineation of floodplains,
23 floodways, and flood fringes shall be in compliance with
24 the National Flood Insurance Program.

25 (2) A new earthen livestock waste lagoon constructed in
26 a karst area shall be designed to prevent seepage of the

1 stored material to groundwater. Owners or operators of
2 proposed facilities shall consult with the local soil and
3 water conservation district, the University of Illinois
4 Cooperative Extension Service, or other local, county, or
5 State resources relative to determining the possible
6 presence or absence of such areas. Notwithstanding the
7 other provisions of this paragraph (2), after the effective
8 date of this amendatory Act of 1999, no earthen livestock
9 waste lagoon may be constructed within 400 feet of any
10 natural depression in a karst area formed as a result of
11 subsurface removal of soil or rock materials that has
12 caused the formation of a collapse feature that exhibits
13 internal drainage. For the purposes of this paragraph (2),
14 the existence of such natural depression in a karst area
15 shall be indicated by the uppermost closed depression
16 contour lines on a USGS 7 1/2 minute quadrangle topographic
17 map or as determined by Department field investigation in a
18 karst area.

19 (b) Registration and certification. Any earthen livestock
20 waste lagoon newly constructed or modified (does not include
21 repairs) after the effective date of rules adopted for the
22 implementation of this Act shall be registered by the owner or
23 operator with the Department on a form provided by the
24 Department. Lagoons constructed prior to the effective date of
25 rules adopted for the implementation of this Act may register
26 with the Department at no charge.

1 In order to give the Department notice of the owner's or
2 operator's intent to construct or modify an earthen livestock
3 waste lagoon, the owner or operator shall register such lagoon
4 with the Department during the preconstruction phase.
5 Construction shall not begin until 30 days after submittal of a
6 registration form by certified mail to the Department. When a
7 public hearing ~~an informational meeting~~ is held ~~requested by~~
8 ~~the county~~, construction shall not begin until after the public
9 hearing is concluded and the comment period has ended
10 ~~informational meeting has been held.~~

11 Livestock waste lagoon registration forms shall be made
12 available to producers at offices of the Department of
13 Agriculture, Cooperative Extension Service, and Soil and Water
14 Conservation Districts.

15 Registration information shall include the following:

16 (1) Name(s) and address(es) of the owner and operator
17 who are responsible for the livestock waste lagoon.

18 (2) General location of lagoon.

19 (3) Design construction plans and specifications.

20 (4) Specific location information:

21 (A) Distance to a private or public potable well;

22 (B) Distance to closest occupied private residence
23 (other than any occupied by owner or operator);

24 (C) Distance to nearest stream; and

25 (D) Distance to nearest populated area.

26 (5) Anticipated beginning and ending dates of

1 construction.

2 (6) Type of livestock and number of animal units.

3 The Department of Agriculture upon receipt of a livestock
4 waste lagoon registration form shall review the form to
5 determine that all required information has been provided. The
6 person filing the registration shall be notified within 15
7 working days that the registration is complete or that
8 clarification of information is needed. No later than 10
9 working days after receipt of the clarification information,
10 the Department shall notify the owner or operator that the
11 registration is complete.

12 The Department shall inspect an earthen livestock waste
13 lagoon during preconstruction, construction, and
14 post-construction. The Department shall require modifications
15 when necessary to bring construction in compliance with the
16 standards as set forth in subsection (a) of Section 15. The
17 person making the inspection shall discuss with the owner,
18 operator, or certified livestock manager an evaluation of the
19 livestock waste lagoon construction and shall (i) provide
20 on-site written recommendations to the owner, operator, or
21 certified livestock manager of what modifications are
22 necessary or (ii) inform the owner, operator, or certified
23 livestock manager that the lagoon meets the standards set forth
24 in subsection (a) of Section 15. On the day of the inspection,
25 the person making the inspection shall give the owner,
26 operator, or certified livestock manager a written report of

1 his or her findings based on the inspection, together with an
2 explanation of any remedial measures necessary to enable the
3 lagoon to meet the standards set forth in subsection (a).

4 The person making any inspection shall comply with
5 reasonable animal health protection procedures as requested by
6 the owner, operator, or certified livestock manager.

7 Upon completion of the construction or modification, but
8 prior to placing the lagoon in service, the owner or operator
9 of the livestock waste lagoon shall certify on a form provided
10 by the Department that the lagoon has been constructed or
11 modified in accordance with the standards set forth in
12 subsection (a) of Section 15 and that the information provided
13 on the registration form is correct.

14 (1) The certification notice to the Department shall
15 include a certification statement and signature.

16 (2) The certification shall state: "I hereby certify
17 that the information provided on this form is correct and
18 that the lagoon has been constructed in accordance with the
19 standards as required by the Livestock Management
20 Facilities Act."

21 Within 10 business days of receipt of the certification of
22 compliance, the Department shall inspect the lagoon site. The
23 Department shall, within 5 business days of the date of
24 inspection, send an official written notice by certified mail,
25 return receipt requested, to the owner or operator of the
26 facility indicating that all the requirements of this Section

1 have been met or that deficiencies exist that must be corrected
2 prior to the completion of the lagoon registration process and
3 the placement of the lagoon into service. The owner or operator
4 of the lagoon may proceed to place the lagoon in service after
5 receipt of the Department's notice that all the requirements of
6 this Section have been met.

7 (c) Complaint procedure. Any person having a complaint
8 concerning an earthen livestock waste lagoon may file a
9 complaint with the Agency. If the Agency finds that groundwater
10 has been negatively impacted because of structural problems
11 with the earthen lagoon, the Agency shall notify the Department
12 that modification of the lagoon is necessary. The livestock
13 owner or operator or the Department may request guidance from
14 the United States Department of Agriculture Natural Resource
15 Conservation Service or the University of Illinois Cooperative
16 Extension Service.

17 The person making any inspection shall comply with animal
18 health protection procedures as requested by the owner or
19 operator.

20 Any earthen livestock waste lagoon in service prior to the
21 effective date of the rules for implementation of this Act is
22 not subject to registration but is only subject to the
23 complaint procedure. However, any such livestock waste lagoon
24 found impacting groundwater shall be required to be repaired,
25 modified, or have procedures instituted so groundwater is not
26 negatively impacted.

1 If an investigation reveals groundwater has been
2 negatively impacted, the Department and Agency shall cooperate
3 with the owner or operator of the affected livestock waste
4 lagoon to provide a reasonable solution to protect the
5 groundwater.

6 Nothing in this Section shall limit the Agency's authority
7 under the Environmental Protection Act to investigate and
8 respond to violations of the Environmental Protection Act or
9 rules adopted under that Act.

10 (d) Livestock waste lagoon registration fee. The livestock
11 waste lagoon registration fee is \$250.

12 (e) Closure of livestock waste lagoons. When any earthen
13 livestock waste lagoon is removed from service, it shall be
14 completely emptied. Appropriate closure procedures shall be
15 followed as determined by rule. The remaining hole must be
16 filled. The closure requirements shall be completed within two
17 years from the date of cessation of operation unless the lagoon
18 is maintained or serviced. The Department may grant a waiver to
19 the before-stated closure requirements that will permit the
20 lagoon to be used for an alternative purpose.

21 Upon a change in ownership of a registered earthen
22 livestock waste lagoon, the owner shall notify the Department
23 of the change within 30 working days of the closing of the
24 transaction.

25 (f) Administrative authority. All actions of the
26 Department of Agriculture are subject to the Illinois

1 Administrative Procedure Act and any applicant, registrant,
2 owner, operator, or affected party shall be able to judicially
3 appeal any Department action under the Administrative Review
4 Law.

5 Any earthen livestock waste lagoon subject to registration
6 shall not begin operation until the owner or operator of the
7 lagoon has met the requirements of this Act.

8 The owner or operator of any earthen livestock waste lagoon
9 subject to registration that has not been registered or
10 constructed in accordance with standards set forth in
11 subsection (a) of Section 15 shall, upon being identified as
12 such by the Department, be given written notice by the
13 Department to register and certify the lagoon within 10 working
14 days of receipt of the notice. The Department may inspect such
15 lagoon and require compliance in accordance with subsections
16 (a) and (b) of this Section. If the owner or operator of the
17 livestock waste lagoon that is subject to registration fails to
18 comply with the notice, the Department may issue a cease and
19 desist order until such time as compliance is obtained with the
20 requirements of this Act. Failure to construct the lagoon in
21 accordance with the construction plan and Department
22 recommendations is a business offense punishable by a fine of
23 not more than \$5,000.

24 (Source: P.A. 90-565, eff. 6-1-98; 91-110, eff. 7-13-99.)

25 (510 ILCS 77/20)

1 Sec. 20. Handling, storing and disposing of livestock
2 waste.

3 (a) The livestock management facility owner or operator
4 shall comply with the requirements for handling, storing, and
5 disposing of livestock wastes as set forth in the rules adopted
6 pursuant to the Illinois Environmental Protection Act
7 concerning agriculture related pollution.

8 (b) The livestock management facility owner or operator at
9 a facility of less than 1,000 animal units shall not be
10 required to prepare and maintain a waste management plan.

11 (c) The livestock management facility owner or operator at
12 a facility of 1,000 or greater animal units but less than 5,000
13 animal units shall prepare and maintain on file at the
14 livestock management facility a general waste management plan.
15 The plan shall be submitted to the Department and the
16 Department shall make the plan available to the public.

17 Notwithstanding this requirement, a livestock management
18 facility subject to this subsection may be operated on an
19 interim basis but not to exceed 6 months after the effective
20 date of the rules promulgated pursuant to this Act to allow for
21 the owner or operator of the facility to develop a waste
22 management plan. The waste management plan shall be available
23 for inspection during normal business hours by Department
24 personnel.

25 (d) The livestock management facility owner or operator at
26 a facility of 5,000 or greater animal units shall prepare,

1 maintain, and submit to the Department the waste management
2 plan for approval. Approval of the waste management plan shall
3 be predicated on compliance with provisions of subsection (f).
4 The waste management plan shall be approved by the Department
5 before operation of the facility or in the case of an existing
6 facility, the waste management plan shall be submitted within
7 60 working days after the effective date of the rules
8 promulgated pursuant to this Act.

9 The owner or operator of an existing livestock management
10 facility that through growth meets or exceeds 5,000 animal
11 units shall file its waste management plan with the Department
12 within 60 working days after reaching the stated animal units.

13 The owner or operator of a livestock management facility
14 that is subject to this subsection (d) shall file within 60
15 working days with the Department a revised waste management
16 plan when there is a change as provided in subsection (e) of
17 this Section that will materially affect compliance with the
18 waste management plan.

19 (d-5) The owner or operator of multiple livestock
20 management facilities under common facility ownership where
21 the cumulative animal units of the facilities are equal to or
22 greater than the animal unit numbers provided for in subsection
23 (c) of this Section shall prepare and keep on file at each
24 facility a waste management plan in accordance with the
25 requirements of subsection (c). The owner or operator of
26 multiple livestock management facilities that are under common

1 facility ownership where the cumulative animal units of the
2 facilities are equal to or greater than the animal unit numbers
3 provided for in subsection (d) of this Section shall prepare
4 and file with the Department a waste management plan in
5 accordance with the provisions of subsection (d). Cumulative
6 animal units shall be determined by combining the animal units
7 of multiple livestock management facilities under the common
8 facility ownership based upon the design capacity of each
9 facility. For the purposes of this subsection (d-5), "under
10 common facility ownership" means the same person or persons
11 own, directly or indirectly, through majority owned business
12 entities at least 51% of any person or persons (as defined by
13 Section 10.55) that own or operate the livestock management
14 facility or livestock waste handling facility located in the
15 State of Illinois.

16 (e) The owner or operator of a livestock management
17 facility shall update the waste management plan when there is a
18 change in values shown in the plan under item (1) of subsection
19 (f) of this Section. The waste management plan and records of
20 livestock waste disposal shall be kept on file for three years.

21 (f) The application of livestock waste to the land is an
22 acceptable, recommended, and established practice in Illinois.
23 However, when livestock waste is not applied in a responsible
24 manner, it may create pollutional problems. It should be
25 recognized that research relative to livestock waste
26 application based on livestock waste nutrient content is

1 currently ongoing. The Dean of the College of Agricultural,
2 Consumer and Environmental Sciences at the University of
3 Illinois, or his or her designee, shall annually report to the
4 Advisory Committee on the status of phosphorus research,
5 including research that has been supported in whole or in part
6 by the Illinois Council on Food and Agricultural Research. The
7 Advisory Committee may also consult with other appropriate
8 research entities on the status of phosphorus research. It is
9 considered acceptable to prepare and implement a waste
10 management plan based on a nitrogen rate, unless otherwise
11 restricted by this Section. The waste management plan shall
12 include the following:

13 (1) An estimate of the volume of livestock waste to be
14 disposed of annually, which shall be obtained by
15 multiplying the design capacity of the facility by the
16 appropriate amount of waste generated by the animals. The
17 values showing the amount of waste generated in Table 2-1,
18 Midwest Plan Service's, MWPS-18, Livestock Waste
19 Management Facilities Handbook or Design Criteria for the
20 field application of livestock waste adopted by the Agency
21 may be used.

22 (2) The number of acres available for disposal of the
23 waste, whether they are owned by the owner or operator of
24 the livestock waste management facility or are shown to be
25 contracted with another person or persons for disposal of
26 waste.

1 (3) An estimate of the nutrient value of the waste. The
2 owner or operator may prepare a plan based on an average of
3 the minimum and maximum numbers in the table values derived
4 from Midwest Plan Service's, MWPS-18, Livestock Waste
5 Facilities Handbook, the Agency's Agriculture Related
6 Pollution regulations, or the results of analysis
7 performed on samples of waste. For the purposes of
8 compliance with this subsection, the nutrient values of
9 livestock waste may vary as indicated in the source table.
10 In the case of laboratory analytical results, the nutrient
11 values may vary with the accuracy of the analytical method.

12 (3.5) Results of the Bray P1 or Mehlich test for soil
13 phosphorus reported in pounds of elemental phosphorus per
14 acre. Soil samples shall be obtained and analyzed from the
15 livestock waste application fields on land owned or under
16 the control of the owner or operator where applications are
17 planned. Fields where livestock waste is applied shall be
18 sampled every 3 years. Sampling procedures, such as the
19 number of samples and the depth of sampling, as outlined in
20 the current edition of the Illinois Agronomy Handbook shall
21 be followed when soil samples are obtained.

22 (3.6) If the average Bray P1 or Mehlich test result for
23 soil phosphorus calculated from samples obtained from the
24 application field is 300 pounds or less of elemental
25 phosphorus per acre, livestock waste may continue to be
26 applied to that field in accordance with subsection (f) of

1 this Section. If the average Bray P1 or Mehlich test result
2 for soil phosphorus for an application field is greater
3 than 300 pounds of elemental phosphorus per acre, the owner
4 or operator shall apply livestock waste at the phosphorus
5 rate to the field until the average Bray P1 or Mehlich test
6 for soil phosphorus indicates there is less than 300 pounds
7 of elemental phosphorus per acre. Upon the development of a
8 phosphorus index that is approved subject to the provisions
9 established in Section 55 of this Act, the owner or
10 operator shall use such index in lieu of the 300 pounds of
11 elemental phosphorus per acre.

12 (4) An indication that the livestock waste will be
13 applied at rates not to exceed the agronomic nitrogen
14 demand of the crops to be grown when averaged over a 5-year
15 period.

16 (5) A provision that livestock waste applied within 1/4
17 mile of any residence not part of the facility shall be
18 injected or incorporated on the day of application.
19 However, livestock management facilities and livestock
20 waste handling facilities that have irrigation systems in
21 operation prior to the effective date of this Act or
22 existing facilities applying waste on frozen ground are not
23 subject to the provisions of this item (5).

24 (6) A provision that livestock waste may not be applied
25 within 200 feet of surface water unless the water is
26 upgrade or there is adequate diking, and waste will not be

1 applied within 150 feet of potable water supply wells.

2 (7) A provision that livestock waste may not be applied
3 in a 10-year flood plain unless the injection or
4 incorporation method of application is used.

5 (8) A provision that livestock waste may not be applied
6 in waterways.

7 (9) A provision that if waste is spread on frozen or
8 snow-covered land, the application will be limited to land
9 areas on which:

10 (A) land slopes are 5% or less, or

11 (B) adequate erosion control practices exist.

12 (10) Methods for disposal of animal waste.

13 (11) A release control and prevention plan that covers
14 releases at land application areas, livestock waste
15 handling facilities, and livestock management facilities.
16 The plan shall include but not be limited to: containment
17 methods, cleanup procedures, and disposal of released
18 waste. In the event of a release, the waste shall be
19 contained and collected immediately upon discovery, and
20 the release shall be reported under Section 18 of this Act.
21 The cause of the release shall be corrected as soon as
22 practicable and before resuming application.

23 (12) A provision that waste applicators shall inspect
24 land application equipment during use for spillage,
25 leakage, blockage, decoupling, and problems that result in
26 improper operation, and ensure the equipment is properly

1 calibrated and in good working order prior to application.
2 During application and for 24 hours afterward, conduits to
3 surface waters (including subsurface drainage systems)
4 shall be monitored to ensure a surface water discharge is
5 not occurring, and application shall cease immediately if
6 there is a discharge. In no instance shall application
7 equipment in use be left unattended.

8 (13) A provision that livestock waste shall not be
9 applied within 100 feet of down gradient open subsurface
10 drainage intakes, agricultural drainage wells, sinkholes,
11 grassed waterways, or other conduits to surface water,
12 unless a 35 foot vegetative buffer exists between the land
13 application area and the grassed waterways, open
14 subsurface drainage intakes, agricultural drainage wells,
15 sinkholes, or other conduits to surface water.

16 (g) Any person who is required to prepare and maintain a
17 waste management plan and who fails to do so shall be issued a
18 warning letter by the Department for the first violation and
19 shall be given 30 working days to prepare a waste management
20 plan. For failure to prepare and maintain a waste management
21 plan, the person shall be fined an administrative penalty of up
22 to \$1,000 by the Department and shall be required to enter into
23 an agreement of compliance to prepare and maintain a waste
24 management plan within 30 working days. For failure to prepare
25 and maintain a waste management plan after the second 30 day
26 period or for failure to enter into a compliance agreement, the

1 Department may issue an operational cease and desist order
2 until compliance is attained.

3 (Source: P.A. 91-110, eff. 7-13-99; 92-16, eff. 6-28-01.)

4 (510 ILCS 77/35)

5 Sec. 35. Setbacks for livestock management and livestock
6 handling facilities.

7 (a) Grandfather provision; facilities in existence prior
8 to July 15, 1991. Livestock management facilities and livestock
9 waste handling facilities in existence prior to July 15, 1991
10 shall comply with setbacks in existence prior to July 15, 1991,
11 as set forth in the Illinois Environmental Protection Act and
12 rules promulgated under that Act.

13 (b) Grandfather provision; facilities in existence on
14 effective date and after July 15, 1991. Livestock management
15 facilities and livestock waste handling facilities in
16 existence on the effective date of this Act but after July 15,
17 1991 shall comply with setbacks in existence prior to the
18 effective date of this Act, as set forth in the Illinois
19 Environmental Protection Act and rules promulgated under that
20 Act.

21 (c) New livestock management or livestock waste handling
22 facilities. Any new facility shall comply with the following
23 setbacks:

24 (1) For purposes of determining setback distances,
25 minimum distances shall be measured from the nearest corner

1 of the residence or place of common assembly to the nearest
2 corner of the earthen waste lagoon or livestock management
3 facility, whichever is closer.

4 (2) A livestock management facility or livestock waste
5 handling facility serving less than 50 animal units shall
6 be exempt from setback distances as set forth in this Act
7 but shall be subject to rules promulgated under the
8 Illinois Environmental Protection Act.

9 (3) For a livestock management facility or waste
10 handling facility serving 50 or greater but less than 1,000
11 animal units to be constructed before the effective date of
12 this amendatory Act of the 98th General Assembly, the
13 minimum setback distance shall be 1/4 mile from the nearest
14 occupied residence and 1/2 mile from the nearest populated
15 area.

16 (4) For a livestock management facility or livestock
17 waste handling facility serving 1,000 or greater ~~but less~~
18 ~~than 7,000~~ animal units to be constructed on or after the
19 effective date of this amendatory Act of the 98th General
20 Assembly, the setback is as follows:

21 (A) For a populated area, the minimum setback shall
22 be increased 1/4 mile ~~440 feet~~ over the minimum setback
23 of one ~~1/2~~ mile for each additional 1,000 animal units
24 over 1,000 animal units.

25 (B) For any occupied residence, the minimum
26 setback shall be increased 1/4 mile ~~220 feet~~ over the

1 minimum setback of 1/2 ~~1/4~~ mile for each additional
2 1,000 animal units over 1,000 animal units.

3 (5) For a livestock management facility or livestock
4 waste handling facility serving 50 ~~7,000~~ or greater but
5 less than 1,000 animal units to be constructed on or after
6 the effective date of this amendatory Act of the 98th
7 General Assembly, the minimum setback is as follows:

8 (A) 750 feet from surface waters; and ~~For a~~
9 ~~populated area, the minimum setback shall be 1 mile.~~

10 (B) 1/4 mile from designated surface drinking
11 water supplies, outstanding resource waters, and
12 streams designated as biologically significant by the
13 Department of Natural Resources. ~~For any occupied~~
14 ~~residence, the minimum setback shall be 1/2 mile.~~

15 (d) Requirements governing the location of a new livestock
16 management facility and new livestock waste-handling facility
17 and conditions for exemptions or compliance with the maximum
18 feasible location as provided in rules adopted pursuant to the
19 Illinois Environmental Protection Act concerning agriculture
20 regulated pollution shall apply to those facilities identified
21 in subsections (b) and (c) of this Section. With regard to the
22 maximum feasible location requirements, any reference to a
23 setback distance in the rules under the Illinois Environmental
24 Protection Act shall mean the appropriate distance as set forth
25 in this Section.

26 (e) Setback category shall be determined by the design

1 capacity in animal units of the livestock management facility.

2 (f) Setbacks may be decreased when innovative designs as
3 approved by the Department are incorporated into the facility.

4 (g) A setback may be decreased when waivers are obtained
5 from owners of residences that are occupied and located in the
6 setback area.

7 (Source: P.A. 91-110, eff. 7-13-99.)

8 (510 ILCS 77/37 new)

9 Sec. 37. Civil action.

10 (a) Any person may commence a civil action on his or her
11 own behalf (1) against any person who is in violation of (A) an
12 agreement of compliance or a compliance order under Section 13
13 or Section 15 of this Act; (B) the release, reporting, odor
14 control, or certified livestock manager standards under
15 Sections 16, 18, 20, 25 or 30 of this Act; or (C) the setback
16 requirements under Section 35 of this Act; or (2) against the
17 Agency or Department where there is an alleged failure to
18 perform any act or duty under this Act that is not
19 discretionary.

20 (b) The court hearing the action may enforce the provisions
21 of this Act by (1) ordering any person to perform the
22 non-discretionary duty, (2) awarding civil penalties under
23 Sections 15, 16, 18, 20, 25, and 30 of this Act, or (3)
24 awarding damages, including attorney and expert witness fees.
25 No existing civil or criminal remedy for any wrongful action is

1 impaired by this Act.

2 (c) Any action brought in a State court under this Section
3 may be brought only in the county in which the livestock
4 facility complained of is located.

5 (d) No action shall be commenced before 60 days after the
6 plaintiff has given notice of the alleged violation to (1) the
7 Department, (2) the Agency, and (3) the alleged violator.

8 (e) No action shall be commenced if, at the time the action
9 is filed, the Department or the Attorney General is diligently
10 prosecuting an administrative hearing or legal action as
11 described in Section 13, 16, 18, 25, or 30 of this Act,
12 regarding the same violation. However, any person has the right
13 to intervene in any civil action as a matter of right.

14 (f) In any action under this Section, the Department may
15 intervene if that intervention results in diligent
16 prosecution.

17 (g) Nothing in this Section restricts any right which any
18 person has under any statute or common law to seek enforcement
19 of any standard related to livestock management facilities,
20 livestock waste handling facilities, or lagoons, or to seek any
21 other relief against the owner or operator of the livestock
22 management facilities, livestock waste handling facilities, or
23 lagoons.

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.